

STATE OF MICHIGAN
COURT OF APPEALS

TERRY A. LARSON, VICKY L. LARSON, and
BERTHA SMITH,

UNPUBLISHED
March 10, 2005

Plaintiffs-Counterdefendants-
Appellants,

and

JACK WRIGHT and MARY SUE WRIGHT,

Plaintiffs-Counterdefendants,

v

THE PRESERVE COMPANY, LTD,

Defendant-Counterplaintiff-
Appellee,

and

LAPEER COUNTY BANK & TRUST
COMPANY,

Defendant.

No. 252774
Lapeer Circuit Court
LC No. 95-021317-CH

Before: Zahra, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiffs¹ appeal as of right the trial court's judgment rejecting their claims of adverse possession relative to a strip of lakefront property ("park area") located across the road from plaintiffs' properties. The Larsons also sought, under the doctrine of adverse possession, to quiet title to a vacant lot bordering the west side of their property. Defendant holds legal title to

¹ The Wrights have not appealed the judgment. Reference to "plaintiffs" in this opinion pertains solely to the Larsons and Bertha Smith.

all of the disputed land. The trial court entered judgment in favor of defendant,² ruling that adverse possession could not be established because plaintiffs failed to show that they possessed any of the disputed property under a claim of right. Additionally, in regard to the vacant lot and the most westerly portion of the park area, the trial court found that the Larsons failed to show that the use of this land was open, visible, and notorious. We affirm.

Actions to quiet title are equitable in nature and thus subject to de novo review; however, the trial court's underlying factual findings are reviewed for clear error. *Dobie v Morrison*, 227 Mich App 536, 541-542; 575 NW2d 817 (1998).

The doctrine of adverse possession is strictly construed. *Burns v Foster*, 348 Mich 8, 14; 81 NW2d 386 (1957). To establish adverse possession, a claimant must show by clear and cogent proof that his possession is actual, visible, open, notorious, exclusive, hostile, under cover of a claim of right, and continuous and uninterrupted for the statutory period of fifteen years. *Id.*; *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995); *Thomas v Rex A Wilcox Trust*, 185 Mich App 733, 736-737; 463 NW2d 190 (1990). Adverse possession requires possession that is hostile and under cover of a claim of right; therefore, where occupancy or possession is permissive, one cannot acquire title to property under the doctrine of adverse possession. *Warner v Noble*, 286 Mich 654, 660; 282 NW 855 (1938).

With regard to the "claim of right" element, our Supreme Court in *Smith v Feneley*, 240 Mich 439, 441-442; 215 NW 353 (1927), explained:

The belief or knowledge of the adverse claimant is not as important as his intentions. The intention is the controlling consideration, and it is not the knowledge or belief that another has a superior title, but the recognition of that title that destroys the adverse character of possession. Claim of title or claim of right is essential to adverse possession, but it is not necessary that an adverse claimant should believe in his title, or that he should have any title. He may have no shadow of title and be fully aware of that fact, but he must claim title. He may go into possession without any claim of title, but his possession does not become adverse until he asserts one; and he may assert it by openly exercising acts of ownership, with the intention of holding the property as his own to the exclusion of all others.

"Claim of title is where one enters and occupies land, with the intent to hold it as his own, against the world irrespective of any shadow or color or right or title." 2 C.J. p. 168, § 324.

"It is not necessary, however, that the party in possession should have expressly declared his intention to hold the property as his own, nor need his

² We do note that the trial court entered a monetary award in favor of plaintiffs in regard to improvements made to the disputed lands over the years.

claim thereto be a rightful one. That his acts and conduct clearly indicate a claim of ownership is enough.” 1 R.C.L. p. 706, § 18. [See also *Walker v Bowen*, 333 Mich 13, 20-21; 52 NW2d 574 (1952).]

It is essential to a claim of adverse possession that a person who occupies or possesses land do so with an intention to claim title. *Ennis v Stanley*, 346 Mich 296, 305; 78 NW2d 114 (1956); *Arduino v Detroit*, 249 Mich 382, 387; 228 NW 694 (1930).

We have thoroughly reviewed the record and conclude that plaintiffs failed to establish by clear and cogent proof that their possession was hostile and under cover of a claim of right. Rather, the evidence reflected that the use or possession of the disputed property was permissive and without an intention to claim title or ownership. We cannot conclude that the trial court clearly erred in its fact finding, nor was there error in the court’s determination that plaintiffs failed to establish adverse possession of the disputed lands.

Affirmed.

/s/ Brian K. Zahra
/s/ William B. Murphy
/s/ Mark J. Cavanagh